

**FILED**

DEC 08 2010

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

KATHLEEN MARY VIERRA,

Plaintiff,

v.

STEPHEN J. HUNT,

Defendant.

Case No.: C 10-2239 PSG

**ORDER SETTING ASIDE DEFAULT,  
SCHEDULING HEARING ON DEFENDANT'S  
MOTION TO DISMISS, AND FURTHER  
CONTINUING CASE MANAGEMENT  
CONFERENCE**

On November 9, 2010, the court issued an order directing the clerk of the court to enter default against Defendant Stephen Hunt based on his failure to timely respond to the complaint, but also ordering that the default would be deemed set aside if the Defendant filed either an answer, or a motion under Rule 12 of the Federal Rules of Civil Procedure ("Rule 12"), no later than November 26, 2010. Defendant filed a Rule 12 motion on November 29, 2010. Although the motion was not filed by the November 26, 2010 deadline set in this court's prior order, in light of the policy in favor of resolving cases on the merits,<sup>1</sup> and Defendant's *pro se* status,<sup>2</sup> the court finds it appropriate to set

<sup>1</sup> See *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9<sup>th</sup> Cir. 2001) (emphasizing that default judgments "are 'appropriate only in extreme circumstances; a case should, whenever possible, be decided on the merits'"

<sup>2</sup> See *Draper v. Coombs*, 792 F.2d 915, 924 (9<sup>th</sup> Cir. 1986) (Under Ninth Circuit case law, *pro se* litigants are treated with "great leniency" when evaluating compliance with "the technical rules of civil procedure").

1 aside the default, set a briefing schedule for Defendant's motion to dismiss or change venue, and  
2 continue the Case Management Conference. Therefore,

3 IT IS HEREBY ORDERED that the default entered by the clerk of the court on November 9,  
4 2010 is SET ASIDE.

5 IT IS FURTHER ORDERED that, no later than January 11, 2011, Plaintiff shall serve on  
6 Defendant (by first class mail) and file with the court her opposition to Defendant's motion to  
7 dismiss or change venue.<sup>3</sup> No later than January 25, 2011, Defendant shall serve on Plaintiff (by first  
8 class mail) and file with the court his reply. Along with their respective briefs, the parties shall each  
9 serve and file either a "Consent to Proceed Before a United States Magistrate Judge," or else a  
10 "Declination to Proceed Before a United States Magistrate Judge and Request for Reassignment."  
11 Both forms are available from the clerk of the court, or from the court's website at  
12 [www.cand.uscourts.gov](http://www.cand.uscourts.gov) in the Forms (Civil) section. Absent further order of the court, the motion  
13 will be deemed submitted on the papers at that time.

14 IT IS FURTHER ORDERED that the Case Management Conference in this case is  
15 CONTINUED to 2:00 p.m. on February 22, 2011. The parties shall serve and file Case Management  
16 Conference Statements no later than February 16, 2011.

17 Dated: *December 8, 2010*

18   
19 PAUL S. GREWAL  
20 United States Magistrate Judge  
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28 <sup>3</sup> The parties can find information about briefing motions in the court's Handbook for Litigants Without a Lawyer, which is available from the clerk of the court, or by clicking on the "Pro Se Handbook" link in the list on the right-hand side of the court's website.

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copies mailed on \_\_\_\_\_ to:

Kathleen Mary Vierra  
1093 Leigh Avenue, #92  
San Jose, CA 95126

Stephen Hunt  
c/o Fanin Group  
1312 North Monroe  
Spokane, WA 99201

Stephen Hunt  
4215 South Hollow St.  
Spokane, WA 99206

  
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OSCAR RIVERA  
Courtroom Deputy